

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8060 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHARATSINH RAMSINH JADEJA

Versus

MANAGING DIRECTOR

Appearance:

MR HK RATHOD for Petitioner

M/S THAKKAR ASSOC. for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 15/07/98

ORAL JUDGEMENT

#. Bharatsing Ramsinh Jadeja has filed the present petition to challenge the order of the respondent by which he was not permitted to retire on the attaining the age of 60 years and was directed to retire on attaining the age of 58 years. The present petitioner joined the service of the Saurashtra Road Transport Corporation on 9-5-1959 as electrician. Thereafter he had become permanent employee of the Saurashtra Road Transport

Corporation (hereinafter referred to as 'SRTC'). The SRTC was subsequently merged in the year 1961 with Gujarat State Road Transport Corporation (for short 'GSRTC'). The service conditions of the employees of the SRTC as well as GSRTC were not one and the same. In view of the difference in service condition, the GSRTC passed resolution on 27th January, 1961 making amalgamation of the said service conditions. In the said resolution, I am concerned only with the Clause 10 - Age of Retirement. From this clause 10, I am particularly concerned with para-2 of the said clause 10 which runs as under :-

(10) AGE OF RETIREMENT :

The retiring age for the employee of the Gujarat State Road Transport Corporation will be 55, but in respect of Class III and IV employee of the Corporation, retiring age may be extended upto 58, provided the workman is physically and mentally fit and his work is satisfactory.

In the Saurashtra Area of the Corporation, the existing permanent workmen in the workshop who are allowed to retire at 60, according to the present practice, may be allowed to continue upto 60. This concession will, however, be personal to the existing permanent incumbants only and will not be extended to any other employee.

Similarly, in the Kutch Area, the existing permanent class IV employees, whose retiring age is 60 years at present, may be allowed to continue, upto 60 years of age. This concession will, however be purely personal to the existing incumbents only and will not be extended to any other employees.

#. Mr.H.K.Rathod, learned advocate for the petitioner vehemently urged before me that in view of the above para, as the present petitioner was the permanent employee of the workshop, he was entitled to serve till the completion of 60 years and there was no justification of compelling him to retire after completing age of 58 years.

#. The petitioner was served with a notice to retire at the age of 58 years by issuing notice dated 2-5-95 and his date of retirement was mentioned as 31st October, 1995. After getting the said notice, he had made a representation to allow him to continue upto his age of

60 years as he was originally belonging to Saurashtra Transport Corporation. The said claim of the petitioner was rejected by the respondent by mentioning therein that as he was not originally the employee of Saurashtra Road Transport Corporation, he was not entitled to continue to till completion age of 60 years. Thereafter he made repeated representation but they were of no use and ultimately he was compelled to retire on completion of 58 years and therefore he has filed this present petition.

#. The claim of the petitioner is resisted by the respondent. It is contended on behalf of the respondent that subsequently there was a circular issued by the Corporation on 29-11-1991 clarifying therein that benefit of retiring after completion of 60 years was available to only Government Employees therefore it is contended in the affidavit in reply by the respondent that as the petitioner was not the original State Government employee, he was not entitled to get benefit of retirement after completing 60 years.

#. I have read the relevant portion of the resolution of the respondent. Now if the resolution of the respondent is considered then it would be quite clear that the benefit of the said resolution will be available only to the workmen working in the workshop. Admittedly, at the time of his retirement, the present petitioner was working as Depot Manager and he retired as Depot Manager. he being Depot Manager, he was drawing basic more than Rs.1600/- as well as he was also having the supervisory powers. He was the head of the depot therefore he had ceased to be a workman at the time of his retirement. The benefit of the retirement given by the said resolution will be available only to the persons who happen to be workmen till the date of retirement. If on account of promotion and getting benefits of promotions if a person goes in higher cadre then his retirement age shall be as per the rules applicable to the higher post. Therefore I don't agree with the respondent that the petitioner is not entitled to get benefit of retirement age upto 60 years as he was not Govt. employee. But I am unable to accept the claim of the petitioner on the ground that on the date of the retirement he had ceased to be workman. As he had ceased to be a workman, he was not entitled to continue in service till age of 60 years. The learned advocate for the petitioner has cited before me the case Supreme Court in S.P.DUBEY VS MPSRT Corporation AIR - 1991 S.C. 276 in that case only question that was considered is as to whether on account of the transfer of employees from one Corporation to another Corporation, he loses the service benefits which

were available to his original Corporation and the Supreme Court has held that he cannot be deprived of those benefits. Here the petitioner is not being deprived of the benefits which he could have obtained on account of the resolution of the Corporation because of the merger of his original employer in the respondent. He is denied the said benefit because he happened to go in promotional post and he ceased to be a workman on the date of the retirement. Therefore, in these circumstances, I reject this petition. Rule is made absolute. No order as to costs.

Date : 15-7-1998 (S.D.Pandit,J.)

(KPP)